

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ROSS PARKHURST and AMY PARKHURST,
individually and as next friend of
H.P., a minor child under the age
of eighteen

PLAINTIFFS

v.

Civ. No. 07-2068

STEPHEN TABOR, individually and in
his official capacity as Prosecuting
Attorney for Twelfth Judicial District,
Sebastian County, State of Arkansas;
DANIEL SHUE, individually and in his
official capacity as Chief Deputy
Prosecuting Attorney for Twelfth
Judicial District, Sebastian County,
State of Arkansas;
COUNTY OF SEBASTIAN, a body corporate
and politic in the State of Arkansas;
CHAD BELT, an individual

DEFENDANTS

ORDER

Before the Court is Plaintiffs' unopposed motion for relief from judgment (Doc. 36) filed pursuant to Fed. R. Civ. Pro. 60(a). Specifically, Plaintiff moves to strike the final sentence of the Court's Memorandum Opinion and Order filed October 30, 2007, stating:

Whereas the Court has determined that it does not have jurisdiction over Plaintiffs' federal claims, it cannot exercise pendant jurisdiction over Plaintiffs' state claims, and those claims are DISMISSED WITHOUT PREJUDICE.

(Doc. 34 p. 16.) Plaintiff argues such dismissal is inappropriate whereas Plaintiffs' claims against Defendant Belt stand independently on diversity jurisdiction under 28 U.S.C. § 1332 and need not rely on pendent jurisdiction to be

properly entertained in federal court.

Having reviewed Plaintiffs' argument, the Court finds its previous disposition of those claims to be in error. While the Court's dismissal of Plaintiffs' claims against Defendants Tabor, Shue and Sebastian County, Arkansas was proper, Plaintiffs' claims against Belt satisfy the requirements of § 1332. Plaintiffs' claims satisfy the amount in controversy requirement, and complete diversity exists whereas Defendant Belt is a resident of the State of Arkansas and Plaintiffs became residents of the State of Washington prior to the initiation of the present lawsuit and remain as such.

Accordingly, the Court finds that Plaintiffs' motion is GRANTED. The above quoted sentence should be struck from the Court's Memorandum Opinion and Order, filed October 30, 2007, and that sentence should be replaced by the following:

Whereas Plaintiffs' state claims against Defendant Belt are properly brought based on 28 U.S.C. § 1332, those claims remain pending in this Court.

Plaintiffs' lawsuit against Defendant Belt remains set for trial on **June 2, 2008** as ordered by the Court in its Final Scheduling Order of October 16, 2007.

IT IS SO ORDERED this 26th day of November 2007.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge